

Private Admonition - Board Case No. 137, 1997. Date of Sanction: May 14, 1999. A panel of the Preliminary Review Committee of the Board on Professional Responsibility offered a private admonition, with the condition of payment of costs of the investigation, to an attorney as a result of its finding that there was probable cause to conclude that the attorney had violated Rule 1.15 of the Delaware Lawyers' Rules of Professional Conduct ("Rule"). The attorney accepted the private admonition and admitted that he violated Rule 1.15 by failing to identify and safeguard property of clients and/or third parties, and failing to promptly deliver said funds or other property to those clients and/or third parties. (Please note that the applicable Rule 1.15 is the version of the Rule which existed prior to its amendment on January 1, 1999.)

The attorney transferred his financial record keeping from a manual system to a computerized system in 1996. At that time, the attorney was aware that the balance of funds in his escrow account exceeded by \$3,659.34 the total of client balances. The attorney took no steps at that time to address this problem.

As of 1997, (new) Supreme Court Rule 73 provided that unclaimed or unidentified funds could be escheated to the State of Delaware. (The Rule was effective December 30, 1996.) The attorney took no steps to disburse the funds or escheat them to the state.

Due to an ongoing investigation of the attorney, which included concerns about the attorney's handling of funds held in escrow, an investigatory audit of the attorney's books and records was performed. That audit by Martin Zukoff, CPA revealed that there were \$3,659.34 in unidentified funds in the attorney's trust account. Also, Mr. Zukoff learned that the attorney had improperly certified to the Delaware Supreme Court that he was in compliance with Rule 1.15, when, in fact, he was not and knew he was not.

The attorney brought his books and records into compliance. He made a good faith effort to identify the unidentified funds. However, the effort was hampered by the long delay in attempting to identify and disburse the funds. The attorney was able to identify \$919.25 of the funds as counsel fees (meaning there had been some co-mingling). The remainder was escheated to the State of Delaware pursuant to Supreme Court Rule 73.

It is noteworthy that the underlying investigation was closed by the ODC without disciplinary action. Nevertheless, the attorney was privately admonished for the trust accounting violations. The attorney had a prior disciplinary record.